

<p>IN THE MATTER OF THE CLAIM</p> <p>OF KAMILAH BOWMAN,</p> <p>CLAIMANT</p> <p>AGAINST THE MARYLAND HOME</p> <p>IMPROVEMENT GUARANTY FUND</p> <p>FOR THE ALLEGED ACTS OR</p> <p>OMISSIONS OF RASHURN</p> <p>HARRISON,</p> <p>T/A B & B CONSTRUCTION,</p> <p>RESPONDENT</p>	<p>* BEFORE BRIAN PATRICK WEEKS,</p> <p>* AN ADMINISTRATIVE LAW JUDGE</p> <p>* OF THE MARYLAND OFFICE</p> <p>* OF ADMINISTRATIVE HEARINGS</p> <p>*</p> <p>*</p> <p>*</p> <p>* OAH No.: LABOR-HIC-02-21-11231</p> <p>* MHIC No.: 20 (75) 823</p> <p>*</p>
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PROPOSED DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
PROPOSED FINDINGS OF FACT
DISCUSSION
PROPOSED CONCLUSION OF LAW
RECOMMENDED ORDER

STATEMENT OF THE CASE

On April 20, 2020, Kamilah Bowman (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund), under the jurisdiction of the Department of Labor (Department), for reimbursement of \$5,093.72 in actual losses allegedly suffered as a result of a home improvement contract with Rashurn Harrison, trading as B & B Construction (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015).¹ On

¹ Unless otherwise noted, all references to the Business Regulation Article are to the 2015 Replacement Volume of the Maryland Annotated Code.

May 4, 2021, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On June 1, 2021, the OAH sent a hearing notice to the parties to inform them that the remote hearing would take place on July 9, 2021. Code of Maryland Regulations (COMAR) 28.02.01.20B. On June 25, 2021, the Respondent sent a letter to the OAH requesting a postponement because she received the hearing notice late and needed additional time to prepare for the hearing. On July 2, 2021, the OAH denied the Respondent's postponement request.

I held a remote hearing on July 9, 2021. Bus. Reg. §§ 8-407(a), 8-312. Hope Miller Sachs, Assistant Attorney General, Department, represented the Fund. The Claimant represented herself. The Respondent represented herself. The Respondent renewed her request for a postponement, and I granted the request for the reasons stated on the record. COMAR 28.02.01.16. On July 29, 2021, I held a remote hearing and Ms. Sachs, the Claimant, and the Respondent were all present.

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 09.01.03; and COMAR 28.02.01.

ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on the Claimant's behalf, unless otherwise noted:

- Cl. Ex. 1 - Contract with deposit receipt, December 11, 2019
- Cl. Ex. 2 - Text messages, various dates
- Cl. Ex. 3 - Text messages between Claimant and Respondent, January 7, 2020
- Cl. Ex. 4 - Text messages between Claimant and Respondent, January 8, 2020
- Cl. Ex. 5 - Text messages between Claimant and Respondent, January 9, 2020
- Cl. Ex. 6 - Contract between the Claimant and Allen Construction Group, LLC with attached photos, signed January 17, 2020
- Cl. Ex. 7 - Text messages between Claimant and Respondent, December 20, 2019
- Cl. Ex. 8 - Text messages between Claimant and Respondent, various dates
- Cl. Ex. 9 - Text messages between Claimant and Respondent, November 26, 2019
- Cl. Ex. 10 - Signature page from December 11, 2019 contract
- Cl. Ex. 11 - Text messages between Claimant and Respondent, various dates
- Cl. Ex. 12 - *not admitted*
- Cl. Ex. 13 - Statement of facts, June 22, 2021
- Cl. Ex. 14 - Statement of facts, July 19, 2021

I admitted the following exhibits on the Respondent's behalf:

- Resp. Ex. 1 - Picture, undated
- Resp. Ex. 2 - Picture, undated
- Resp. Ex. 3 - Picture, undated
- Resp. Ex. 4 - Text messages between Claimant and Respondent, undated
- Resp. Ex. 5 - Text messages between Claimant and Respondent, undated

Resp. Ex. 6 - Text messages between Claimant and Respondent, undated

Resp. Ex. 7 - Text messages between Claimant and Respondent, undated

Resp. Ex. 8 - Text messages between Claimant and Respondent, undated

Resp. Ex. 9 - Response to MHIC, May 11, 2020

I admitted the following exhibits on the Fund's behalf:

Fund Ex. 1 - Hearing notice with attached hearing order, June 1, 2021

Fund Ex. 2 - Respondent's licensing record, printed June 29, 2021

Fund Ex. 3 - Letter from MHIC to Respondent with attached claim, May 5, 2020

Testimony

The Claimant testified and did not present other witnesses.

The Respondent testified and did not present other witnesses.

The Fund did not present any testimony.

PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed home improvement contractor under MHIC license number 114830.
2. On December 11, 2019, the Claimant and the Respondent entered into a contract to install a full bath in the Claimant's basement (Contract). The Contract called for the installation of a thirty-two inch shower.
3. The original agreed-upon Contract price was \$3,180.00.
4. On December 11, 2019, the Claimant paid the Respondent \$2,000.00.
5. On December 17, 2019, the Respondent began demolition work in the Claimant's basement and completed the partial demolition of the concrete on December 19, 2019.

6. On December 28, 2019, a plumber hired by the Respondent fixed the Claimant's damaged sewer line and ran the rough-in plumbing underground.

7. On January 2, 2020, the Claimant texted the Respondent that she wanted the plumber to move the back flow out of the bathroom to give her more space for the shower. The Respondent texted back that the back flow was located in the washroom because the size of the Respondent's shower pan was to be 23x23.² The Claimant also texted the Respondent that no permits had been pulled for the work at her residence, and the Respondent informed her that a permit would be pulled on January 6, 2020. The Claimant texted that she wanted to speak with the plumber directly about his work but not about the permit.

8. On January 7, 2020, the Respondent texted a photo to the Claimant showing the proposed location of the shower using plywood. The Claimant texted back to the Respondent that she would like a four-foot shower, which is approximately a foot more than the shower that the Respondent had planned on installing. The Respondent requested an additional \$1,500.00 to install the larger shower. The Claimant offered \$750.00.

9. On January 8, 2020, the Respondent offered to return \$800.00 to the Claimant if the Claimant agreed to cancel the Contract.

10. On January 9, 2020, the Respondent texted the Claimant to ask if the Claimant wanted the Respondent to return to work that day. The Claimant texted the Respondent that she had filed a complaint with the MHIC.

11. As of January 9, 2020, twelve bags of unused concrete and ten to fifteen 2x4 lumber sections that had been purchased by the Respondent were left at the Claimant's residence.

² This text seems to be an error and should read 32x32 based on the Respondent's testimony that the Contract called for a four-foot shower.

12. On January 17, 2020, the Claimant signed a contract with Allen Construction Group, LLC (ACG) to remove the Respondent's plumbing work and install a new bathroom including custom mud shower base, tiled shower, and twenty-four inch vanity (ACG Contract). The ACG Contract also included the framing of the bathroom and laundry area and installation of drywall in those areas – these items were not part of the Contract. The Contract also did not call for a tiled shower, custom base, or twenty-four inch vanity. ACG completed the work in February 2020. ACG used the 2x4 sections that had been left by the Respondent.

DISCUSSION

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Bus. Reg. § 8-407(e)(1); Md. Code Ann., State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3). To prove a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) (“The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401.

For the following reasons, I find that the Claimant has not proven eligibility for compensation.

The evidence offered by the Claimant is not sufficient to establish that the Respondent committed an unworkmanlike, inadequate, or incomplete home improvement. There is no

dispute that the Claimant terminated the Contract. She argued that she was justified in terminating the Contract because (1) the Respondent failed to pull the proper permit for the plumbing work; and (2) the Respondent demanded additional money to move the backflow valve outside the shower surface area. The Respondent basically conceded that her plumber failed to pull the proper permit when she testified that the plumber should have pulled the permit prior to starting work. However, I decline to draw the inference that the Respondent's work was unworkmanlike or inadequate based solely on the plumber's failure to pull the proper permit prior to starting plumbing work.

The only other evidence of unworkmanlike or inadequate work is the Claimant's text to the Respondent where she stated that "the t must be replaced with a y in order to pass code." The Claimant did not identify the applicable code provision in her testimony, and did not call anyone to testify as to how the Respondent's work was unworkmanlike or inadequate. On cross-examination, she could not identify who told her that the Respondent's work was not up to code, only that it was "a contractor." Further, the ACG contract did not specify why the Respondent's work was not up to code. For all of these reasons, I give no weight to the Claimant's statement that the Respondent's work did not comply with the applicable code, primarily because the basis of her knowledge is an unidentified hearsay declarant which makes her statement unreliable.

The Claimant also argued that she was justified in terminating the Contract because the Respondent requested additional money to move the backflow valve. However, the Claimant did not prove that the Respondent initially agreed to construct a four-foot shower, as she requested after the plumber had completed the rough-in. There is no document in the record that shows the scope of work for the Contract – the Contract references an Exhibit A that contains the scope of

work but no Exhibit A was made part of the record. However, the Respondent testified with specificity as to the details of the Contract, including the fact that the scope of work included a thirty-two inch shower. I accept the Respondent's testimony as to the agreement regarding the size of the shower, because the text messages in the record are consistent with her testimony. In the text messages, the Claimant requested that the Respondent move the backflow valve to create additional space for the shower. The Respondent informed her that it would be an additional \$1,500.00 because a four-foot shower is larger than what had been agreed to. (Resp. Ex. 5). The Claimant then admitted that "you didn't give a (sic) option to maximize the space. Like I could 32 or 54 etc. And it really wasn't clear to me until I was given another option." (Resp. Ex. 6). Therefore, it is clear that the Claimant was requesting a larger shower than had been agreed to in the Contract, and that the Respondent was justified in asking for additional money for this amendment to the Contract. Accordingly, the Claimant has not proven that the Respondent performed an unworkmanlike or inadequate home improvement when installing the backflow valve.

I thus conclude that the Claimant is not eligible for compensation from the Fund.

PROPOSED CONCLUSION OF LAW

I conclude that the Claimant has not sustained an actual and compensable loss as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2015).

RECOMMENDED ORDER

I **RECOMMEND** that the Maryland Home Improvement Commission:

ORDER that the Maryland Home Improvement Guaranty Fund deny the Claimant's claim; and

ORDER that the records and publications of the Maryland Home Improvement Commission reflect this decision.

CONFIDENTIAL

October 7, 2021
Date Decision Issued

Brian Patrick Weeks
Administrative Law Judge

BPW/dlm
#194474

PROPOSED ORDER

WHEREFORE, this 4th day of March, 2022, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.

Joseph Tunney

Joseph Tunney

Chairman

Panel B

***MARYLAND HOME IMPROVEMENT
COMMISSION***